

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

MACA.No. 559 of 2010 ()

AGAINST THE AWARD IN OPMV 1411/2007 of M.A.C.T.,KOZHIKODE DATED 27-07-2009

APPELLANT/PETITIONER IN OP (MV) :

JAMEELA.P.T, AGED 43 YEARS,
W/O. P.T. MUHAMMED ASHRAF, 4/844, KHUBAIRAT
KALIYATTO PARAMBA, VELLAYIL, KOZHIKODE.

BY ADVS.SRI.AVM.SALAHUDIN
SMT.P.Y.SHEHEERA
SRI.T.SHYAM PRASAD

RESPONDENT(S)/RESPONDENTS IN OP (MV) :

* 1. AYISHABI, D/O. ABDULLA KOYA,
18/115-A, PUTHAN VEEDU, JAIL ROAD
KOZHIKODE. (DELETED)

*2. NASSAR AHAMMED, S/O. MAMMU,
VALIYAPADANNAYIL VEEDU, KOTTAMPARAMBA POST, CHEVAYUR
KOZHIKODE.

*(R1 & R2 DELETED FROM THE PARTY ARRAY AT THE RISK OF THE
APPELLANT VIDE ORDER DATED 19.01.2015 IN IA.53/2015)

3. THE NEW INDIA ASSURANCE CO. LTD.,
SHAFEER COMPLEX, KANNUR ROAD, KOZHIKODE.

R3 BY ADV. SMT.M.HEMALATHA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
24-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A. No.559 of 2010

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Dated this the 24th day of June, 2015

JUDGMENT

Anu Sivaraman, J.

The appellant is the claimant in O.P(MV).No.1411 of 2007 before the Motor Accidents Claims Tribunal, Kozhikode. Respondents 1, 2 and 3 are the owner, driver and insurer respectively of an auto rickshaw in which the appellant was travelling, which met with an accident on 29.07.2005. It is alleged in the claim petition that the accident occurred due to the rash and negligent driving of the auto rickshaw by the second respondent and that the appellant, who was a house wife suffered grievous injuries as a result of the accident. She claimed compensation of ₹4,00,000/- in aggregate under various heads.

2. Respondents 1 and 2 remained ex-parte. The third respondent insurer filed written statement admitting insurance of the auto rickshaw but pleaded violation of policy conditions in as much as there were four passengers in the auto rickshaw. Annexures A1 to A6 documents were produced on the side of the claimant. Considering the evidence on record, the Tribunal found that the driver of the auto rickshaw was negligent and that the insurer was liable to satisfy the award. On the question of quantum, considering the nature of the

injuries suffered by the appellant, the Tribunal came to the conclusion that the disability of the appellant can be roughly estimated as 25%, taking the notional income as ₹2,000/-. It was stated that a multiplier of 13 would be appropriate in the instant case. However, while awarding compensation, only an amount of ₹3,120/- was awarded as compensation for disability. An aggregate amount of ₹1,11,420/- was awarded as compensation by the Tribunal including ₹80,000/- as medical expenses, ₹20,000/- for pain and suffering and ₹1,500/- towards loss of amenities.

3. We have heard Smt. Divya A.C., learned counsel for the appellant and Smt. M. Hemalatha, learned counsel for the third respondent. The learned counsel for the appellant submits that the appellant was an able bodied woman of 45 years. She was a house wife. The Tribunal has in paragraph 9 of the award stated that since there was no evidence regarding the income of the petitioner, the income can be fixed at ₹2,000/- per month. However, it is contended by the learned counsel for the appellant that there was no basis for taking the amount of ₹2,000/- as notional income of the appellant, especially in view of the fact that in a case of an accident which occurred in the year 2005, a Bench of this court in judgment dated 21.5.2013 in M.A.C.A.No.981 of 2009, after considering the judgments of the Apex Court, has taken the income of a 51 year old house wife as

₹4,500/- per month. It is clear that in the instant case, the appellant being a house wife aged 45 years is entitled to be awarded compensation for permanent disability reckoning her income as ₹ 4,500/- per month. Eventhough the Tribunal observed that the proper multiplier to be adopted is 13 and that the appellant has suffered 25% permanent disability, it proceeded to award only ₹3,120/- as compensation towards permanent disability. We do not find any justification in this calculation. The insurer has not assailed the finding of disability assessed by the Tribunal. In the result, we hold that the appellant is entitled to be awarded compensation towards permanent disability by reckoning her monthly income as ₹4,500/-, adopting the multiplier of 13 and reckoning her disability at 25%. The appellant would be entitled to an amount of ₹1,75,500/- as compensation towards permanent disability. Deducting the amount already granted, the appellant would be entitled to get an enhanced compensation of ₹1,72,380/- under that head.

4. The learned counsel for the appellant contended that Exts.A4, A5 and A6 series medical bill produced by the appellant would go to show that she had expended a total amount of ₹1,42,185/- towards her treatment charges. The veracity of these bills were not assailed or discredited before the Tribunal. However, the tribunal has granted only ₹80,000/- towards medical expenses. We do not find any justification

for the reduction of the amount awarded towards medical expenses to ₹80,000/-, in view of the fact that the claim of the appellant was clearly supported by documents which were not seriously disputed by the third respondent. We therefore find that the appellant is entitled to an enhanced amount of ₹62,185/- towards medical expenses. It was also contended that considering the nature of injuries suffered by the appellant, the amount of ₹20,000/- awarded by the Tribunal as compensation towards pain and suffering is too low. We find that the appellant had sustained comminuted fracture of D5 vertebra, fracture of right clavicle, fracture of rib, bilateral hemothorax, cervical spine C2 to C5 contusion with central cord syndrome and other injuries. It is clear from Ext.A3 discharge summary produced by the appellant that she had undergone tracheostomy and ventilation for prolonged duration. She was treated as an in-patient in hospital for 33 days. We are of the opinion that a further sum of ₹30,000/- should be awarded to the appellant towards pain and suffering.

5. It is further contended by the learned counsel for the appellant that after having noticed that the appellant had been an in-patient for 33 days, only an amount of ₹4,000/- was granted towards bystander's expenses. Going by a modest estimate, reckoning ₹200/- towards expenses of a bystander per day, the appellant would be entitled to an amount of ₹6,600/- as compensation under that head.

We therefore award an enhanced amount of ₹2,600/- under the head bystander's expenses. It is also seen that only an amount of ₹1,500/- has been granted by the Tribunal towards loss of amenities. We find that in the instant case, where the appellant was found to be suffering from disability of 25%, an amount of ₹25,000/- should have been granted under the head loss of amenities. Deducting the amount awarded by the Tribunal, appellant would be entitled to a further sum of ₹23,500/- under that head.

We do not find any reason to interfere with the award of compensation under the other heads. We accordingly allow the appeal in part and award an additional compensation of ₹2,90,665/- with 9% interest from the date of petition till the date of deposit. The third respondent shall deposit the above sum with interest before the Tribunal within two months from today. Upon such deposit being made, the entire amount deposited shall be released to the appellant/claimant. There will be no order as to costs.

**P.N.RAVINDRAN
JUDGE**

**ANU SIVARAMAN
JUDGE**